

22 October 1986
OCA 86-3538

MEMORANDUM FOR: ADGC/AL&MS/OGC
C/ALD/OGC

FROM: Legislation Division
Office of Congressional Affairs

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SUBJECT: Congressional Passage of H.R. 4154 -
Elimination of Private Sector Mandatory
Retirement

Summary

1. The Congress passed, and the President is expected to sign, H.R. 4154, a bill to ban mandatory retirement in the private sector. The bill does not address the law governing federal (including Agency) employee retirement. Statements made during the consideration of the bill, however, indicate that its proponents may seek to address that subject next year in the 100th Congress.

Current Law

2. Age Discrimination - The Private Sector. As you know, Section 12 (a) of the Age Discrimination in Employment Act (ADEA) currently provides that the ADEA's prohibitions against private sector employment discrimination on account of age are limited to persons less than 70 years of age. 29 U.S.C. §631 (a). Thus, mandatory retirement at age 70 is currently permissible.

3. Age Discrimination - Federal & Agency Employees. Section 12 (b) and Section 15 of the ADEA set forth the law governing age discrimination in the federal government generally. 29 U.S.C. §§ 631 (b), 633a. They appear to bar across-the-board mandatory retirement, but to leave open the possibility of an agency establishing age requirements for specific positions. It would appear these provisions govern the retirement of Agency employees not participating in the Central Intelligence Agency Retirement and Disability System (CIARDS) subject, however, to any actions taken by the Agency to establish age requirements for specific positions under the authority of these sections and any interpretations of the relevant law by the Office of General Counsel. Section 235 of

the Central Intelligence Agency Retirement Act of 1964 for Certain Employees provides a mandatory retirement age for participants in the Central Intelligence Agency Retirement and Disability System (CIARDS). Section 5 (f) of the Central Intelligence Agency Act, 50 U.S.C. §403f (f), authorizes the Director of Central Intelligence to determine and fix maximum age limits for original appointments to operational positions.

The Bill

4. Abolishes Private Sector Mandatory Retirement. On October 17, 1986, the House passed H.R. 4154, the "Age Discrimination in Employment Amendments of 1986," clearing the measure for Presidential action (He is expected to sign it). Section 2 (c) of the bill amends Section 12 (a) of the ADEA (effective January 1, 1987) so as to eliminate 70 years of age as an upper limit on impermissible discrimination. Thus, as of January 1, private sector mandatory retirement will become unlawful.

5. No Effect on Federal Retirement Law. The bill does not address the law governing age discrimination in the federal government. Specifically, it does not amend or affect any of the aforementioned federal/Agency retirement laws.

Outlook

6. For your information, I have attached copies of: 1) the bill as passed (pp. H11280 - H11283 from the Congressional Record of October 17, 1986); 2) the report of the House Education and Labor Committee on the bill, House Report No. 99-756; and, 3) the House floor debate on its first passage and full consideration of the bill (pp. H8117 - H8140 from the Congressional Record of September 23, 1986).

7. You will note that in the "Supplemental Views" section of the House Report (pp. 13-14), several Members, led by Representative Jeffords, the Ranking Minority Member on the Education and Labor Committee, draw attention to the fact that the bill (as reported out of the Committee) continued to permit mandatory retirement for employees in the preferential federal retirement systems but barred such for state and local government employees. They characterize this discrepancy as "another example of the Federal Government's refusal to abide by the rules it has laid down for the States."

8. Subsequently, as you will note on pp. H 8118 - H8122 from the Record attachment, Representative Jeffords led a floor fight to have included in the bill the so-called "Jeffords Amendment." As the effort was unsuccessful, the text of the

amendment does not appear. The debate indicates, however, that the effect of the Jeffords Amendment would have been to eliminate the mandatory retirement age for all federal preferential retirement systems.

9. The effort was opposed by the Administration, acting through the Department of Justice, and Representative Ford, Chairman of the House Post Office and Civil Service Committee. Chairman Ford noted the anomaly which would have been created had the Jeffords amendment succeeded in abolishing mandatory retirement ages for federal preferential retirement systems hard on the heels of the passage of the comprehensive federal retirement reform legislation which had been based specifically on the existence of those systems.

10. Although opponents were successful in defeating the amendment, you will note that Representative Jeffords did obtain a commitment during the floor debate from Representative Pepper (Chairman of the Rules Committee and sponsor of the bill) to address the issue in the 100th Congress (p. H 8118). This indicates that next year in the 100th Congress there could be a move to open the issue with respect to federal employees.

11. We will keep you advised of developments. Feel free to contact this office if you have any questions

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Attachments:
as stated

OCA/LEG [redacted] (22 Oct 86)

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